



# Credit (Commonwealth Powers) Act 2010

Current as at 1 July 2013—revised version

## Reprint note

Powers under the *Reprints Act 1992* have been used in this reprint to bring the legislation into line with current drafting practice.

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Queensland

# Credit (Commonwealth Powers) Act 2010

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# Credit (Commonwealth Powers) Act 2010

**An Act to adopt the *National Consumer Credit Protection Act 2009* (Cwlth) (as amended) and the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth), and to refer certain matters relating to the provision of credit and certain other financial transactions to the Parliament of the Commonwealth, for the purposes of section 51(xxxvii) of the Commonwealth Constitution, to repeal the *Consumer Credit (Queensland) Act 1994* and the regulations under that Act, to repeal the *Credit Act 1987* and the regulations under that Act, to provide for transitional and other matters relating to the referral of those matters and the repeal of those Acts and regulations, and to continue to provide for a maximum annual percentage rate for credit contracts**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Credit (Commonwealth Powers) Act 2010*.

### 2 Commencement

The provisions of this Act, other than parts 2 and 5, commence on a day to be fixed by proclamation.

## Part 2 Adoption and reference of matters

### 3 Definitions for part

In this part—

*adoption* means the adoption under section 4(1).

*amendment reference* means the reference under section 6(1).

*Commonwealth Credit instrument* means any instrument (whether or not of a legislative character) that is made or issued under the National Credit legislation.

*express amendment* of the National Credit legislation means the direct amendment of the text of the National Credit legislation (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the National Credit legislation.

*National Credit legislation* means—

- (a) the *National Consumer Credit Protection Act 2009* (Cwlth); and
- (b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth);

as in force from time to time.

*referred credit matter* means a matter relating to either of the following—

- (a) credit, being credit the provision of which would be covered by the expression ‘provision of credit to which this Code applies’ in the relevant version of the National Credit Code;

- (b) consumer leases, being consumer leases each of which would be covered by the expression ‘consumer lease to which Part 11 applies’ in the relevant version of the National Credit Code.

*relevant version of the National Credit Code* means the text of schedule 1 to the *National Consumer Credit Protection Act 2009* (Cwlth) as originally enacted, and as later amended by the *National Consumer Credit Protection Amendment Act 2010* (Cwlth).

*relevant version of the National Credit legislation* means—

- (a) the *National Consumer Credit Protection Act 2009* (Cwlth) as originally enacted, and as later amended by the *National Consumer Credit Protection Amendment Act 2010* (Cwlth); and
- (b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth).

#### **4 Adoption of National Credit legislation**

- (1) The relevant version of the National Credit legislation is adopted within the meaning of section 51(xxxvii) of the Commonwealth Constitution.
- (2) The adoption has effect for a period—
  - (a) beginning when this section commences; and
  - (b) ending at the end of the day fixed under section 5 as the day on which the adoption is to terminate;

but no longer.

#### **5 Termination of adoption**

- (1) The Governor may, at any time, by proclamation published in the gazette, fix a day as the day on which the adoption terminates.
- (2) The Governor may, by proclamation published in the gazette, revoke a proclamation published under subsection (1), in

which case the revoked proclamation is taken (for the purposes of section 4) never to have been published.

- (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (4) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

## **6 Reference of matters**

- (1) Subject to section 7, any referred credit matter is referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to such a matter by making express amendments of the National Credit legislation.
- (2) The reference of a matter under subsection (1) has effect only—
  - (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under section 51(xxxvii) of the Constitution of the Commonwealth); and
  - (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- (3) Despite any other provision, the reference has effect for a period—
  - (a) beginning when this section commences; and
  - (b) ending at the end of the day fixed under section 8 as the day on which the reference terminates;but no longer.

## **7 Matters excluded from reference**

- (1) A matter referred by section 6(1) does not include—



- (a) the matter of making provision with respect to the imposition or payment of State taxes, duties, charges or other imposts, however described; or
- (b) the matter of making provision with respect to the general system for the recording of estates or interests in land and related information; or
- (c) the matter of providing for the priority of interests in real property; or
- (d) the matter of making a law that excludes or limits the operation of a State law, to the extent the State law makes provision with respect to the creation, holding, transfer, assignment, disposal or forfeiture of a State statutory right.

(2) In this section—

***forfeiture*** means confiscation, seizure, extinguishment, cancellation, suspension or any other forfeiture.

***State law*** means—

- (a) any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time; or
- (b) the general law, being the principles and rules of common law and equity to the extent they have effect in the State from time to time.

***State statutory right*** means a right, entitlement or authority granted by or under any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time, other than a right, entitlement or authority relating to—

- (a) credit covered by paragraph (a) of the definition of *referred credit matter* in section 3; or
- (b) a consumer lease covered by paragraph (b) of that definition.

## **8 Termination of reference**

- (1) The Governor may, at any time, by proclamation published in the gazette, fix a day as the day on which the amendment reference terminates.
- (2) The Governor may, by proclamation published in the gazette, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 6) never to have been published.
- (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (4) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

## **9 Amendment of Commonwealth law**

For the avoidance of doubt, it is the intention of the Parliament of the State that—

- (a) the National Credit legislation may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this Act by provisions of Commonwealth Acts the operation of which is based on any legislative powers that the Parliament of the Commonwealth has on account of a reference of any matters, or the adoption of the relevant version of the National Credit legislation, under section 51 (xxxvii) of the Commonwealth Constitution; and
- (b) the National Credit legislation may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this Act by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from a reference of any matters, or the adoption of the relevant version of the National Credit legislation, under section 51(xxxvii) of the Commonwealth Constitution; and

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- (c) the National Credit legislation may have its operation affected, otherwise than by express amendment, at any time by provisions of Commonwealth Credit instruments.

## **10 Effect of termination of amendment reference before termination of adoption of Commonwealth Acts**

- (1) If the amendment reference is terminated but the adoption of the relevant version of the National Credit legislation is not terminated, the termination of the amendment reference does not affect—
  - (a) laws that were made under the amendment reference (but not repealed) before that termination (whether or not they have come into operation before that termination); or
  - (b) the continued operation in this State of the National Credit legislation as in operation immediately before that termination or as subsequently amended or affected by—
    - (i) laws referred to in paragraph (a) that come into operation after that termination; or
    - (ii) provisions referred to in section 9(b) or (c).
- (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the adoption is terminated.
- (3) Subsection (1) does not apply to or in relation to an amendment of the National Credit legislation that is excluded from the operation of this section by the proclamation that terminates the amendment reference.
- (4) For the purposes of subsection (1)—
  - (a) the laws referred to in subsection (1)(a) include Commonwealth Credit instruments; and
  - (b) the reference in subsection (1)(b) to the National Credit legislation as in operation immediately before the

termination of the amendment reference includes that legislation as affected by Commonwealth Credit instruments that have come into operation before that time.

## Part 3 Repeals

### 11 Repeals

The following are repealed—

- Consumer Credit (Queensland) Act 1994, No. 51
- Consumer Credit (Queensland) Special Provisions Regulation 2008, SL No. 222
- Consumer Credit Regulation 1995, SL No. 410
- Credit Act 1987, No. 52
- Credit Regulations 1988.

## Part 4 Transitional provisions

### Division 1 Preliminary

#### 12 Definitions for part

In this part—

*Consumer Credit Fund* means the Consumer Credit Fund under the repealed *Consumer Credit (Queensland) Act 1994*, section 51.

*continued fund* means the Consumer Credit Fund as continued under section 17(1).

*former consumer credit legislation* means the following as in force before their repeal—

- 
- (a) the *Consumer Credit (Queensland) Act 1994* including the Consumer Credit (Queensland) Code;
  - (b) the *Consumer Credit Regulation 1995*;
  - (c) the *Consumer Credit (Queensland) Special Provisions Regulation 2008*.

**National Credit Code** means the National Credit Code in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cwlth).

**National credit legislation** means—

- (a) the *National Consumer Credit Protection Act 2009* (Cwlth); and
- (b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth).

**repealed Consumer Credit (Queensland) Code** means the Appendix to the repealed *Consumer Credit (Queensland) Act 1994*.

## 13 Acts Interpretation Act, s 20 not limited

This part does not limit the *Acts Interpretation Act 1954*, section 20.

*Note—*

However, see the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth), schedule 1, part 2 (Transition from the old Credit Codes to the new Credit Code).

## Division 2 Transitional provisions for the repeal of Credit Act 1987

### 14 Definition for division

In this division—

**repealed Act** means the repealed *Credit Act 1987*.

## **15 Continuation of effect of repealed Act**

- (1) Despite the repeal of the repealed Act, the repealed Act continues to apply as prescribed by the repealed Act, sections 21A and 21B in relation to persons, contracts and other matters to the same extent it applied before the repeal.
- (2) For the purpose of subsection (1), the repealed Consumer Credit (Queensland) Code continues to have effect for the purposes of sections 21A and 21B of the repealed Act as if the Consumer Credit (Queensland) Code had not been repealed.
- (3) Amounts payable under section 87B of the repealed Act to the Consumer Credit Fund are to be paid to the continued fund.
- (4) To remove any doubt, it is declared that a reference to the repealed Act in this section includes a reference to regulations made under the repealed Act.

## **Division 3 Transitional and other provisions for the repeal of Consumer Credit (Queensland) Act 1994**

### **Subdivision 1 Preliminary**

#### **16 Definition for division**

In this division—

*repealed Act* means the repealed *Consumer Credit (Queensland) Act 1994*.

### **Subdivision 2 Consumer Credit Fund**

#### **17 Continuation of Consumer Credit Fund**

- (1) The Consumer Credit Fund continues in existence despite the repeal of the repealed Act.

- (2) Accounts for the continued fund must be kept as part of the departmental accounts of the department.
- (3) Amounts received for the continued fund must be deposited in a departmental financial institution account of the department but may be deposited in an account used for depositing other amounts of the department.
- (4) The chief executive may change the name by which the continued fund is known.

- (5) In this section—

*departmental accounts*, of the department, means the accounts of the department under the *Financial Accountability Act 2009*, section 69.

*departmental financial institution account*, of the department, means an account of the department kept under the *Financial Accountability Act 2009*, section 83.

*other amounts*, of the department, means amounts received by the department other than amounts received for the continued fund.

## **18 Amounts payable to continued fund**

- (1) This section applies to the following amounts—
  - (a) a repealed Act amount;
  - (b) an amount, that corresponds to an amount mentioned in subsection (5), that is payable because of the application of the former consumer credit legislation as provided under section 33(2).
- (2) An amount mentioned in subsection (1)(a) continues to be payable to the continued fund.
- (3) An amount mentioned in subsection (1)(b) is payable to the continued fund.
- (4) The continued fund consists of the following—
  - (a) amounts that are in the Consumer Credit Fund on the commencement of this subdivision;

- (b) amounts payable into the fund.
- (5) A ***repealed Act amount*** is an amount payable under the repealed Act or the repealed *Credit Act 1987* to the Consumer Credit Fund or the continued fund including, for example—
- (a) an amount payable under the repealed Consumer Credit (Queensland) Code, section 106;
  - (b) an amount payable under the repealed *Credit Act 1987*, section 87B;
  - (c) another amount payable to the continued fund by a credit provider under the repealed Act;
  - (d) interest and other income derived from the investment of amounts standing to the credit of the continued fund;
  - (e) costs awarded to the chief executive by a court in a proceeding under the repealed Act;
  - (f) costs awarded to the registrar by a court in a proceeding under the repealed *Credit Act 1987*;
  - (g) interest and earnings from investments;
  - (h) costs awarded to the chief executive.
- (6) However, an amount payable under subsection (5)(a) does not include an amount that is payable to the Commonwealth under the National Credit Code on the commencement of that Code.

## **19 Payments from continued fund**

- (1) The chief executive may approve the payment of an amount from the continued fund, on terms the chief executive considers appropriate, for any of the following purposes—
- (a) engaging with consumers;
  - (b) research for consumer policy;
  - (c) general consumer education campaigns;
  - (d) consumer surveys;
  - (e) other consumer-related initiatives;



- (f) legal fees incurred by the chief executive, or costs awarded by a court against the chief executive, in a proceeding under the repealed Act;
  - (g) legal fees incurred by the registrar, or costs awarded by a court against the registrar, in a proceeding under the repealed *Credit Act 1987*.
- (2) The continued fund is taken to be closed when all amounts in the fund are expended.

## **20 Report on operations of continued fund**

The department's annual report for a financial year must include a report on the operations of the continued fund during the year.

## **Division 4 General provisions for Act No. 16 of 2010**

### **21 Continuation of maximum annual percentage rate for existing credit contracts**

- (1) Subsection (2) applies to an existing credit contract under the former consumer credit legislation.
- (2) The provisions of the former consumer credit legislation in relation to the maximum annual percentage rate under an existing credit contract continue to apply as if those provisions had not been repealed and were still in force.
- (3) Without limiting subsection (2), the following provisions of the former consumer credit legislation are applied in relation to the maximum annual percentage rate under an existing credit contract—
  - (a) the provisions in relation to the enforcement of that rate;
  - (b) the provisions in relation to any powers of investigation in relation to that rate;

(c) the provisions in relation to the taking of any proceedings or action against a credit provider in relation to that rate.

(4) In this section—

*existing credit contract* means a credit contract to which the former consumer credit legislation applied immediately before the repeal of the *Consumer Credit (Queensland) Act 1994*.

## 22 Proceedings

Any proceedings relating to any matter arising under the provisions of the former consumer credit legislation that were commenced before the commencement of this part, but were not finally decided as at the commencement, may continue to be dealt with or otherwise decided as if those provisions had not been repealed.

## 23 Offences

- (1) This section applies if a person is alleged to have committed an offence against the former consumer credit legislation before the commencement of this part.
- (2) Despite the Criminal Code, section 11, proceedings for the offence may be started or continued, and the court may hear and decide the proceedings, as if this Act, other than this section, had not commenced.
- (3) However, proceedings may not be started under part 6, division 3 of the repealed *Consumer Credit (Queensland) Act 1994*.

*Notes—*

- 1 See the *National Consumer Credit Protection Act 2009* (Cwlth), chapter 2 (Licensing of persons who engage in credit activities).
- 2 See also the note to section 13.

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## 24 Control of credit provider's practices

- (1) This section applies if it appears to the chief executive that a credit provider has repeatedly engaged in unjust conduct under the repealed *Consumer Credit (Queensland) Act 1994* (the **repealed Act**) before its repeal.
- (2) The provisions of part 6, division 2 of the repealed Act for the taking of any proceedings or action against a credit provider in relation to the unjust conduct mentioned in subsection (1) apply as if this Act, other than this section, had not commenced.

## 25 Monitoring, enforcement and administration generally

- (1) This section applies for the purpose of the monitoring, enforcement and administration generally of the repealed *Consumer Credit (Queensland) Act 1994* (the **repealed Act**), including the repealed Act as continued in effect for any purpose.
- (2) The repealed Act, parts 7 and 9, and anything done under those parts, continues to apply as if the parts had not been repealed.
- (3) To remove any doubt, it is declared that a person holding an appointment as an inspector under section 33(3) is authorised to perform functions and exercise powers for the purposes of this division.

## 26 References to superseded legislation and subordinate legislation

- (1) This section applies—
  - (a) unless the contrary intention appears or the context requires a different interpretation; and
  - (b) to take account of the adoption of matters under section 4 and the referral of matters under section 6.
- (2) A reference in an Act, a statutory instrument, or any other kind of instrument or a contract, agreement or other

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document, to an Act, code or regulations stated in column 1 of the following table will have effect as if it were a reference to the Act, code or regulations stated opposite it in column 2 of the table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<i>Consumer Credit (Queensland) Act 1994</i>	<i>National Consumer Credit Protection Act 2009 (Cwlth)</i>
<i>Consumer Credit (Queensland) Code</i>	<i>National Credit Code</i>
<i>Consumer Credit (Queensland) Regulation 1995 or Consumer Credit (Queensland) Provisions Regulation 2008</i>	Regulations made for the purposes of the <i>National Consumer Credit Special Protection Act 2009 (Cwlth)</i> (including the <i>National Credit Code</i> )

## **27 Transitional regulation-making power**

- (1) A regulation (a ***transitional regulation***) may make provision of a saving or transitional nature—
  - (a) for which it is necessary to make provision to allow or facilitate the change from the operation of the provisions of the former consumer credit legislation to the operation of the provisions of the National credit legislation; and
  - (b) for which this Act does not make provision or sufficient provision.
- (2) Without limiting subsection (1), a transitional regulation may continue the operation of a repealed provision.
- (3) A transitional regulation may have retrospective operation to a day not earlier than the commencement of this section.
- (4) To the extent to which a provision takes effect under subsection (3) from a day earlier than the day of the

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regulation's notification in the gazette, the provision does not operate to the disadvantage of a person by—

- (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (5) A transitional regulation must declare it is a transitional regulation.
- (6) This section and a transitional regulation expire 2 years after the day the regulation commences.
- (7) In this section—

*former consumer credit legislation* includes the following—

- (a) the *Credit Act 1987*;
- (b) the *Credit Regulations 1988*.

## **Division 5                      Saving provision for Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013**

### **27A      Saving of repealed pt 6 for existing credit contracts**

- (1) Repealed part 6 continues to apply in relation to an existing credit contract and the maximum annual percentage rate for the contract as if the *Liquor and Gaming (Red Tape Reduction) and Other Legislation Act 2013*, part 5 had not commenced.

- (2) In this section—

*existing credit contract* means a credit contract entered into on or after 31 July 2008 to which repealed part 6 applied immediately before the commencement of this section.

*repealed part 6* means part 6 as in force immediately before the commencement of this section.

## Part 5 Provisions relating to ASIC

### 28 Provision of information and assistance to ASIC

- (1) The Minister is authorised, on his or her own initiative or at the request of ASIC—
  - (a) to provide ASIC with the documents and other information in the possession or control of the Minister that are reasonably required by ASIC in connection with the performance or exercise of its functions or powers under the National credit legislation; and
  - (b) to provide ASIC with other assistance that is reasonably required by ASIC to perform or exercise a function or power under the National credit legislation.
- (2) Subsection (1) applies despite any other Act or law.
- (3) The Minister is authorised to do an act or thing under this section before the commencement of the National credit legislation.

### 29 ASIC has particular functions and powers

- (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with ASIC for the performance of functions or the exercise of powers by ASIC as an agent of the State, even if those functions or powers are or may be conferred on another person or body by or under a law of the State.
- (2) An agreement or arrangement of a kind mentioned in subsection (1) has effect by force of this section despite any provision of a law of the State in relation to any function or power that is the subject of the agreement or arrangement.

*Note—*

The *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*, Schedule 1, part 4, section 23 provides that ASIC has particular functions and powers that are expressed to be conferred on it by or under a law of a State.